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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

ADIDAS AMERICA, INC., and
ADIDAS-SALOMON AG,

Plaintiffs,

v.

PAYLESS SHOESOURCE, INC.,

Defendant.

No. CV01-1655 KI (Lead Case)
Related Case CV03-1116 KI

**DEFENDANT'S MOTION FOR
JUDGMENT AS A MATTER OF LAW OR
A NEW TRIAL (i) DUE TO PLAINTIFF'S
FAILURE TO PROVE THE FACT OF
ACTUAL DAMAGE, AND (ii) ON THE
ISSUE OF WILLFULNESS**

By Defendant Payless ShoeSource, Inc.
Pursuant to Fed. R. Civ. P. 50, 59

Request for Oral Argument

LOCAL RULE 7.1 CERTIFICATION

Payless certifies that it has met and conferred in good faith with counsel for adidas in an effort to resolve the issues raised in this Motion, but that such efforts have been unsuccessful.

MOTION

Pursuant to Fed. R. Civ. P. 50 and 59, Payless respectfully moves the Court to enter judgment as a matter of law based on plaintiff adidas' failure to prove the fact of actual damages at trial and on the issue of Payless' willfulness or, in the alternative, a new trial. The grounds supporting this Motion are set forth in the concurrently filed Legal Memorandum in Support.

DATED: May 12, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2008, I caused to be served a copy of the foregoing **DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR A NEW TRIAL (i) DUE TO PLAINTIFF'S FAILURE TO PROVE THE FACT OF ACTUAL DAMAGES, AND (ii) ON THE ISSUE OF WILLFULNESS** on the following person(s) in the manner indicated below at the following address(es):

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- ☐ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☐ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

/s/ William B. Crow
An Attorney for Defendant